

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 24.3.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.9890 of 2013

P.Sivasubramani

...Petitioner

versus

The Secretary to Government,
Tamil Nadu Public Service Commission,
Chennai 600 104.

...Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the respondent in connection with the memo issued in C.No.01901161/GrIV/SCE/PSD/C1/2009 dated 15.3.2013 and quash the same and further direct the respondent to appoint the petitioner as Junior Assistant in pursuance of his provisional selection for the post included in Gr.IV Services Special Competitive Examination 2007 and grant him all consequential service and monetary benefits.

For petitioner

Mr.K.Venkataramani, Sr. Counsel
for Mr.M.Muthappan

For respondent

Mr.M.M.Devendran

O R D E R

The petitioner challenges the order dated 15 March 2013 whereby and whereunder, Tamil Nadu Public Service Commission, (hereinafter referred to as "the Service Commission") cancelled his provisional selection on the ground of failure to disclose the pendency of criminal case in the attestation form notwithstanding the disclosure made well before the final selection.

Brief facts :-

2. The petitioner was appointed temporarily as Junior Assistant during the period of indefinite strike of Government employees. The Government thereafter issued a notification calling for applications from such temporary employees for regular appointment. The petitioner

submitted application through proper channel. The petitioner was provisionally selected. The petitioner appeared for certificate verification on 21 August 2008 and informed Service Commission voluntarily that a case in Cr.No.690 of 1998 was pending against him. The disclosure made the Service Commission to issue notice to the petitioner on 23 July 2012, calling upon him to show cause as to why his provisional selection should not be cancelled. The petitioner submitted his explanation. Thereafter, the Commission passed the impugned order cancelling the provisional selection. Besides, he was debarred for a period of one year. The said order is under challenge in this Writ Petition.

3. The Joint Secretary to the Service Commission in his counter affidavit admitted the factual position that on 21 August 2008, the date on which the petitioner appeared for certificate verification, he disclosed the factum of pendency of a criminal case in C.C.No.690 of 1998 on the file of Judicial Magistrate, Jayamkondam. According to the Service Commission, the petitioner failed to disclose the pendency of criminal case in the attestation form which was submitted earlier and as such, the impugned order was rightly issued.

Submissions :-

4. The learned Senior counsel for the petitioner contended that application for appointment was made through proper channel. The petitioner has simply signed the printed format forwarded to him by the Tahsildar, Ariyalur, who has also attested the employment certificate. The learned Senior Counsel submitted that the petitioner at the earliest opportunity disclosed the factum of pendency of criminal case against him and as such, he should not be penalized. It was his further contention that the employment certificate issued by the Tahsildar, Ariyalur, refers only to the charges memo in respect of disciplinary proceedings, and it has nothing to do with the criminal case and as such, the respondent was not correct in contending that the petitioner submitted a false attestation form. The learned Senior counsel further contended that the criminal case relates to a dharna made in front of a police station on account of the death of a remand prisoner. The criminal Court subsequently acquitted the petitioner. This aspect was not considered by the respondents.

5. The learned standing counsel for Service Commission justified the impugned order. According to the learned counsel, the petitioner has signed the declaration format knowing very well that a criminal case was pending against him. The learned Standing Counsel admitted the factual position that the petitioner informed the Service commission voluntarily on the date of certificate verification with regard to his involvement in a criminal case. Even then, he is liable

for action on account of his failure to declare the pendency of criminal case at the first instance.

Discussion :-

6. The Service Commission issued a notification calling for applications for appointment to the post of Group IV services. It was a special competitive examination for regularizing the services of temporary appointees. The OMR application requires to be forwarded through proper channel. The OMR format contains a declaration printed in small letters. There is also a column for declaration. The petitioner is expected to sign the declaration. The relevant declaration reads thus :-

" 1.

2.

3.

4. I have gone through the instructions, Brochure and the Commission's notification/advertisement for this recruitment before filling up the application form. I also certify that I have not been debarred by the TNPSC or any other recruiting agency. I also certify that no criminal nor any disciplinary proceeding has been initiated or pending against me."

7. There is no column to write yes or no. The applicant is expected to affix his signature in the box earmarked for the said purpose. The Commission would be justified in its contention in case there is a format in which the concerned candidate has to fill up the details, including information with regard to the pendency of criminal case. Here in the subject case, the declaration itself is a printed text. Candidate has to put his signature in the prescribed box. The petitioner signed the application and it was forwarded to the Commission by the Tahsildar, Ariyalur. The Tahsildar has given the employment certificate in the prescribed format. Sl.No.7 of the Format wanted the head of the office to mention as to whether any charge is pending or contemplated against the candidate. The column has nothing to do with criminal case. The said information relates to disciplinary proceedings only. The Tahsildar Ariyalur, against column no.7, recorded "Nil". The said certificate is also taken as a material by the Commission to contend that the petitioner made a wrong declaration with regard to the pendency of criminal case.

8. There is no dispute with regard to the legal position that in case a candidate has given a false declaration in the attestation form, it would result in rejection of his application. However, the facts of the present case are entirely differently. Though the petitioner signed the printed declaration format, the fact remains that even before the conclusion of selection process, he voluntarily

declared the pendency of criminal case registered against him. It is not as if the Service Commission received information with regard to the involvement of the petitioner in a criminal case and issued notice to him and thereafter, fresh declaration was made by him. Here is a case wherein the petitioner voluntarily made a declaration that he is involved in a criminal case and it is pending on the file of Judicial Magistrate, Jayamkondam. The said declaration made before finalizing the selection would relate back to the earlier date on which he signed the printed form and related declaration.

9. The police registered a case against the petitioner and 50 others, who have protested outside the police station on account of the death of a person who was in judicial custody. Name of the petitioner was not included in the first information report. The petitioner was ultimately acquitted by judgment dated 31 March 2011. It was an honourable acquittal inasmuch as none of the witnesses have identified the accused.

10. The declaration made by the petitioner on 21 August 2008 that a criminal case is pending against him alone made the respondent to issue show cause notice. I have posed a specific query to the learned Standing Counsel for the Commission as to whether there was any report received by the Commission before making the declaration by the petitioner on 21 August 2008. The learned Standing Counsel took instruction from the Service Commission and fairly submitted that the petitioner himself made the declaration suo motu on 21 August 2008 and the Service Commission was not in the know of things till then. Therefore, it is very clear that the petitioner himself has made a declaration with regard to the pendency of criminal case against him. It is also a matter of record that the petitioner was subsequently acquitted by the criminal court. Such being the position, I am of the considered view that the respondent was not correct in arriving at a conclusion that the petitioner submitted a false attestation form. In fact, it was not in the nature of an attestation form. It was more in the nature of a declaration made in a printed format without any option to the candidate.

11. I have verified the original file produced by the Commission which contain the OMR Sheet. I find it very difficult to read the declaration contained in the application format and more particularly the declaration regarding pendency of criminal case. As stated above, this declaration cannot be construed to be an attestation format inasmuch as in an attestation format, the candidate has to answer each query. Here the Commission has given a printed declaration and the candidate is expected merely to sign the box below the declaration. Such being the factual position, it cannot be said that the petitioner misrepresented facts and made a false declaration.

12. (A) Similar issue came up for consideration before the Supreme Court in *Commr. of Police v. Dhaval Singh*, (1999) 1 SCC 246.

(B) In *Dhaval Singh*, the applicant had put a cross mark in the relevant column with regard to the pendency of criminal case. The application was submitted on 21/27 August 1995. The candidate was provisionally selected after passing the written test and interview. However, before issuing the order of appointment, the candidate wrote a letter to the Deputy Commissioner of Police on 15 November 1995, intimating him that a criminal case is pending against him. The Appointing Authority, thereafter, conducted verification and having found that a criminal case was pending, cancelled his candidature on the ground of suppression of material facts in the application form. In the meantime, the candidate was acquitted by the criminal court by judgment dated 8 December 1995. The representation given by the candidate was rejected by the Commissioner of Police. The candidate filed an original application before the Central Administrative Tribunal. The original application was allowed and a direction was issued to consider him for appointment. The matter was taken up by the Commissioner of Police before the Supreme Court.

(C) The Supreme Court having found that the petitioner has made a voluntary declaration even before the date of appointment, upheld the order passed by the Tribunal. Paragraph 5 of the order would make the position clear.

5. That there was an omission on the part of the respondent to give information against the relevant column in the Application Form about the pendency of the criminal case, is not in dispute. The respondent, however, voluntarily conveyed it on 15-11-1995 to the appellant that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case against him and that his letter may be treated as "information". Despite receipt of this communication, the candidature of the respondent was cancelled. A perusal of the order of the Deputy Commissioner of Police cancelling the candidature on 20-11-1995 shows that the information conveyed by the respondent on 15-11-1995 was not taken note of. It was obligatory on the part of the appellant to have considered that application and apply its mind to the stand of the respondent that he had made an inadvertent mistake before passing the order. That, however, was not done. It is not as if information was

given by the respondent regarding the inadvertent mistake committed by him after he had been acquitted by the trial court – it was much before that. It is also obvious that the information was conveyed voluntarily. In vain, have we searched through the order of the Deputy Commissioner of Police and the other record for any observation relating to the information conveyed by the respondent on 15-11-1995 and whether that application could not be treated as curing the defect which had occurred in the Form. We are not told as to how that communication was disposed of either. Did the competent authority ever have a look at it, before passing the order of cancellation of candidature? The cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material. The Tribunal, therefore, rightly set it aside. We uphold the order of the Tribunal, though for slightly different reasons, as mentioned above.

13. Most recently, the Supreme Court in *Joginder Singh vs. Union Territory of Chandigarh and others*, 2015 (2) SCC 377, indicated that in case acquittal is an honourable one, the candidate should not be deprived from being appointed to the post in public employment.

14. The petitioner in the subject case signed a declaration form like the one which was before the Supreme Court in *Dhaval Singh*, cited supra. There was no intentional suppression of material particulars by the petitioner. The petitioner, even before the completion of selection process, made a declaration about his involvement in a criminal case. The Service Commission in its counter affidavit very clearly admitted the said fact. Such being the factual position, the Service Commission was not correct in cancelling the provisional appointment of the petitioner and debarring him from taking part in the subsequent examinations for a period of one year. The case of the petitioner is similar to the facts in *Dhaval Singh*. I am therefore of the view that the petitioner must succeed.

Disposition :-

15. In the result, the impugned order dated 15 March 2013 is set aside. The Tamil Nadu Public Service Commission is directed to restore the provisional selection of the petitioner and pass further orders to give him appointment. Such exercise shall be completed within a period of four weeks from the date of receipt or production of a copy of this order.

16. In the upshot, I allow the Writ Petition. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

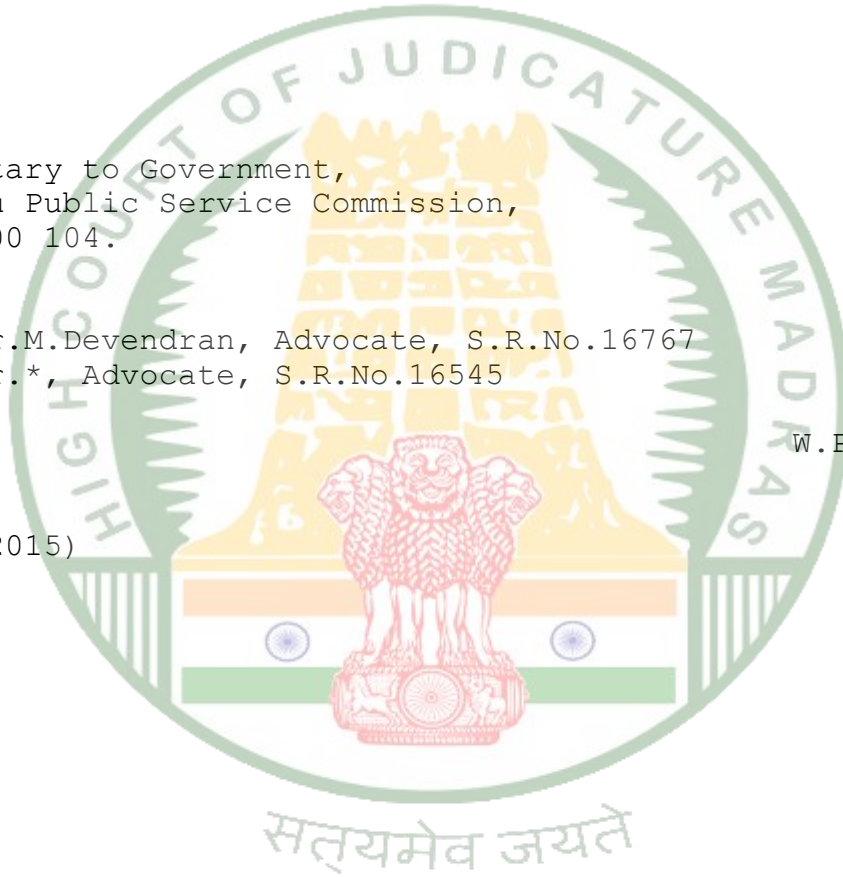
The Secretary to Government,
Tamil Nadu Public Service Commission,
Chennai 600 104.

+1cc to Mr.M.Devendran, Advocate, S.R.No.16767

+1cc to Mr.*, Advocate, S.R.No.16545

W.P.No.9890 of 2013

KK(CO)
CA(31/03/2015)



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